

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE: WORLD TRADE CENTER
DISASTER SITE LITIGATION,

-----X
THOMAS MAGEE,

Plaintiff,

- against -

THE PORT AUTHORITY OF NEW YORK
AND NEW JERSEY, SILVERSTEIN
PROPERTIES and THE CITY OF NEW YORK,

Defendants.

21 MC 100 (AKH)

Civil Action No. 05 Civ. 07210 (AKH)

DECLARATION OF NOAH H. KUSHLEFSKY

1. I am an attorney licensed to practice law in the courts of the State of New York and represent Thomas Magee in the above captioned-action. On June 15, 2011 I was substituted as attorney of record for plaintiff, in place of his prior counsel. After substituting as Mr. Magee's counsel, his former attorneys provided me with all of their files and records regarding Mr. Magee's action in this Court and his prior proceedings before the Victim Compensation Fund ("VCF"). On the basis of my review of those records, discussions with prior counsel, Mr. Magee and opposing counsel, as well as review of the docket in this case, I am fully familiar with the facts and proceedings in this action. I file this declaration in support of (1) his motion to strike certain affirmative defenses proffered by defendants The Port Authority of New York and New Jersey ("Port Authority"), Silverstein Properties ("Silverstein") and The City of New York ("New York City") and remand his case to state court and (2) his opposition to the motion for summary judgment filed by the Port Authority and New York City. The facts below and in the Memorandum of Law filed in support are either from my personal knowledge or, where indicated, taken from the attached exhibits.

2. Attached hereto as Exhibit A is a true and accurate copy of the Summons and Verified Complaint dated February 3, 2003.
3. Attached hereto as Exhibit B is a true and accurate copy of the State of New York Workers' Compensation Board Employee's Claim for Compensation form dated June 21, 2002.
4. Attached hereto as Exhibit C is a true and accurate copy of the September 11th Victim Compensation Fund of 2001 Personal Injury Compensation form dated February 24, 2004.
5. Attached hereto as Exhibit D is a true and accurate copy of the letter from the June 4, 2004 VCF award letter.
6. Thomas Magee originally filed a lawsuit for his respiratory injuries but stipulated to the dismissal of that suit on or about April 12, 2004. Mr. Magee has never dismissed his lawsuit for orthopedic injuries.
7. Thomas Magee received a deposit of \$536,206 from the Victims' Compensation Fund on about July 10, 2004. At the time that he received that payment, he had dismissed his lawsuit for respiratory injuries, but had not dismissed his lawsuit for orthopedic injuries.

Dated: New York, New York
December 30, 2011

/s/ Noah H. Kushlefsky
Noah H. Kushlefsky, Esq.